
(2013) 12 P&H CK 0198
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1916 of 1994

Suresh Kumar

APPELLANT

Vs

District Collector

RESPONDENT

Date of Decision : 05-12-2013

Acts Referred:

Citation : (2014) 175 PLR 75

Hon'ble Judges : Jasbir Singh, J;Gurmeet Singh Sandhawalia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Jasbir Singh, J.—After getting prior approval from Director Panchayats, Haryana vide order dated 12.1.1990, the Gram Panchayat put to auction 12 marlas of land, situated in Village Ding, District Sirsa. On 16.11.1990, the auction went in favour of the petitioner being highest bidder for an amount of Rs. 70,000/-. That amount was deposited by him. Sale deed was executed on 12.3.1991. The petitioner was put in possession and he raised construction thereupon, by spending an amount of Rs. 99,980/-. It was so mentioned in a report made by the Block Development and Panchayat Officer on 12.12.1989.

2. Above said sale was put under challenge by respondent No. 5, stating that the auction was not conducted as per rules. Price paid is towards the lower side. No publication was done before effecting auction and the proceedings were conducted in a clandestine manner.

3. Upon notice, reply was filed by the petitioner wherein it was stated that proper procedure was adopted before selling the land through auction which was done in the village in the presence of respectable, members of the Gram Panchayat and authorised officers.

4. Before conducting auction, proper publication was done through notice in a local newspaper. The Respondent further averred that at the time of auction, Jot Ram, Lal Chand, Ram Kumar, Ami Lal also offered bids. It was stated that Shiv

Shankar Lal-respondent No. 5 (applicant) was also present as his house is situated next to the land in dispute. Each person gave bid by depositing Rs. 10,000/- each with the authorised officer. It was further stated that besides above mentioned persons, Ram Kumar son of Nathu Ram of village Ding and Ram Partap, Gram Sachive were also present there.

5. The Collector sought report from the BDPO. In report dated 9.12.1992, it was stated that the above officer, along with Social Education and Panchayat Officer and some other persons visited the site and reported that the market price of the land was about Rs. 5000-6000/- per marla and the construction existing therein was in a dilapidated condition.

6. The Assistant Collector vide order dated 10.2.1993, dismissed application filed by respondent No. 5, by observing as under:-

I have heard both the learned counsel for the parties, perused the evidence on record, the report of the Block Development and Panchayat Officer, Nathuseri Chaupta carefully. According to the statement of Sh. Ram Partap, Gram Sachive, Ding area, it is clear that the auction was conducted in the village in accordance with Rules and Munadi was got done through the Chowkidar of the village, all the members of the Panchayat and in the presence of the Block Development and Panchayat Officer from Ex. P1 and Ex. P3 and Mark "A" it is clear that the respondent No. 1 has paid the auction money in accordance with Rules and the proper publication was made and munadi through the Chowkidar was also done in the village. It is also clear from Ex. D4 that the registered sale deed of the disputed land was also made in favour of respondent No. 1 vide Registry No. 707 dated 12.3.1991. As per the report of BDPO, the market price of the land is 5000-6000/- per marla and the total disputed land is 12 marlas. Thus, under these circumstances, the auction made in favour of respondent No. 1, cannot be cancelled as these auction proceedings were conducted in the presence of BDPO. The present application is without merits and the same is dismissed.

7. In the above order, it was specifically observed that the auction was conducted in the village as per Rules. Before conducting auction proclamation was done in the village through Chowkidar and the proceedings were conducted in the presence of Panchayat members. It was also observed that after auction, sale deed was executed and registered on 12.3.1991. Report of the BDPO was also noticed to say that price of the land was about Rs. 5000-6000/- per marla.

8. Auction was held to be valid. Respondent No. 5 went in appeal, which was allowed. Auction was set aside. Relevant portion of the order dated 21.12.1993 reads thus.

I have heard the arguments of both the sides and also perused the records. It is correct that u/s 10(5) of the Punjab Village Common Lands Act. The Assistant Collector should have assessed the amount incurred on the building by Suresh but he has not done so. Thus, I do not consider the order under appeal to be a good order under law. I accept the appeal and set aside the order under appeal.

Besides this, the auction of the disputed land is also set aside and the case is sent to the Assistant Collector, Sirsa with the direction that he should determine the total amount incurred on building by Suresh Kumar u/s 10(5) of the above Act and the land be re-auctioned according to law. Unless the compensation is assessed and is paid to the party, the status quo will be maintained regarding possession. Both the parties are directed to appear before the Assistant Collector (SDO, Civil), Sirsa on 5.1.1994.

9. The order passed above, shows non application of mind. To cancel auction, it was said that as per the provisions of Section 10(5) of the Act, compensation was not assessed.

10. The Collector set aside the auction on a very wrong premise. The provisions of Section 10(5) of the Act will come into operation only when the Assistant Collector had cancelled an auction, in that event compensation to be paid, to a vendee, has to be assessed.

11. In this case, auction was upheld, having been conducted as per rules. In that event there was no necessity to look into the provisions of Section 10(5) of the Act. The Collector has not given any finding that there was any irregularity in conducting the auction.

12. It was found, as a matter of fact, by the Assistant Collector in order dated 10.2.1993, that auction was conducted in the presence of authorised representatives and after getting prior approval from the Government vide order dated 12.1.1990. Before conducting auction, in compliance to the Rules, proclamation was done in the village and through pamphlets also.

13. The Collector when reversing order passed by the Assistant Collector, virtually has not given any finding in that regard and gone wrong in setting aside the auction proceedings, simply for non compliance of the provisions of Section 10(5) of the Act. The said provision is not applicable in the present case.

14. It has also come on record that as per report made by the BDPO, value of the land, at that time, was about Rs. 5000-6000/- per marla. 12 marlas of land was purchased by the petitioner for an amount of Rs. 70000/-. There is nothing on record to show that the price fixed was towards the lower side. Otherwise also, it appears that, as per admission made by respondent No. 5, during his cross examination, he had filed the application on account of old existing rivalry between the parties. The petitioner is in settled possession and had raised construction in the land in dispute. In view of above, this writ petition is allowed, order dated 21.12.1993, passed by the Collector is set aside.